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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 615

SOCIEDAD ESPAÑOLA DE AUXILIO MUTUO Y BENEFICENCIA DE PUERTO RICO,
Petitioner,

vs.

RAFAEL A. BUSCAGLIA, TREASURER OF PUERTO RICO, ET AL.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.

GABRIEL DE LA HABA,
Attorney for the Petitioner.

DAMIÁN MONSERRAT, JR.,
RAFAEL BARAGAÑO, JR.,
Of Counsel.

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.

Your petitioner, Sociedad Española de Auxilio Mutuo y Beneficencia de Puerto Rico, prays that a writ of certiorari issue to review an order of the Circuit Court of Appeals for the First Circuit, entered *per curiam* in the above case, dismissing the appeal for lack of jurisdiction on the ground that the value in controversy does not exceed $5,000.00, as required by paragraph Fourth of 28 U. S. C., Sec. 225(a). On a petition for rehearing the order was affirmed by the court below.

Opinion Below

The *per curiam* opinions of the court below, dismissing the appeal for lack of jurisdiction and affirming its order on petition for rehearing, appear in the record at pages 127 and 129-132. The official report has not been published.

Jurisdiction

The order of the court below dismissing the appeal for lack of jurisdiction was entered on November 10, 1947 and the order denying the petition for rehearing was entered on December 12, 1947. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 15, 1925, and Section 8(d) of the same Act (28 U. S. C. A., Sections 347(a) and 350).

On December 22, 1947 the mandate was stayed until further order of the court below on condition that a petition for writ of certiorari be filed in this Court on or before February 20, 1948.

Question Presented

Whether the value in controversy in the appeal taken in the above case from the judgment of the Supreme Court of Puerto Rico of November 29, 1946 exceeds $5,000.00.

Statute Involved

Section 128 of the Judicial Code as amended, 28 U. S. C., Sec. 225(a).

Statement

The proceedings herein were commenced in the Tax Court of Puerto Rico by a petition on appeal questioning the right of the Treasurer of Puerto Rico to assess petitioner's properties for tax purposes (R. 1-3). The petition shows that it is a complaint against the assessment made

of petitioner's hospital properties, for property tax purposes, for the fiscal year 1941-42, and that the assessment was questioned because the petitioner herein contended that it is a charitable and non-profit association and therefore exempt from the payment of property taxes under the provisions of Section 291(e) of the Political Code of Puerto Rico. The petition prays for a declaration and judgment to the effect that the petitioner was exempt under said statute from the payment of property taxes on its hospital buildings and lands up to five *cuerdas* [1] in area.

The Tax Court rendered judgment vacating the assessment and declaring and adjudging the petitioner herein exempt from the payment of property taxes under Section 291(e) of the Political Code of Puerto Rico (R. 88). Respondent herein filed a petition for a special writ of certiorari in the Supreme Court of Puerto Rico (R. 89-92). The writ issued (R. 92). The Supreme Court of Puerto Rico reversed the Tax Court on November 29, 1946 (R. 102). On January 14, 1947, that court denied reconsideration (R. 111). The judgment rendered by the Supreme Court of Puerto Rico declared and adjudged the petitioner herein not exempt from the payment of property taxes under the statute. The direct result of the judgment is that petitioner became liable for the payment of property taxes on its properties, not only for the fiscal year 1941-42, but for every year thereafter and for at least fifteen years prior thereto.

On January 17, 1947, the petitioner filed in the Supreme Court of Puerto Rico an affidavit of amount in controversy (R. 112). It supplies the elements for exact computation of the amount owed to the Government of Puerto Rico for taxes on petitioner's properties at the time the appeal

[1] A *cuerda* is a local measure used in Puerto Rico slightly less than one acre.

was taken to the Circuit Court. This affidavit has not been controverted and there was no other evidence before the Circuit Court with respect to the value in dispute or the amount in controversy.

The appeal from the judgment of the Supreme Court of Puerto Rico to the Circuit Court was taken on January 23, 1947 (R. 111). The contention of the petitioner herein in its appeal to the Circuit Court is that the judgment appealed from is inescapably wrong and patently erroneous (R. 123).

Motion to dismiss the appeal on the ground that the value in controversy does not exceed $5,000.00 was filed by the respondent herein in the court below, and the motion was granted (R. 127). Petition for rehearing was denied (R. 132). The motion to dismiss was granted and the petition for rehearing was denied upon the authority of *Elgin* v. *Marshall,* 106 U. S. 578 (1882), and *Healy* v. *Ratta,* 292 U. S. 263 (1934), and on the further ground that since the facts could vary from year to year it could not be predicted whether the petitioner would be liable for taxes for other years than fiscal year 1941-42, and that therefore, tax liability for other years could not be taken into consideration in determining the amount in controversy in the present case. There is no allegation, affidavit or other evidence by the respondent that the facts did vary between fiscal year 1941-42 and the year of the appeal, 1947, and the real fact is that they did not vary.

Specification of Errors to Be Urged

The Court below erred:

1. In holding that the case at bar is controlled by the decisions of this Court in *Elgin* v. *Marshall,* 106 U. S. 578, and *Healy* v. *Ratia,* 292 U. S. 263.

2. In holding that the value in controversy is the amount of the tax for fiscal year 1941-42, to wit: $2,957.96.

3. In not treating the amount stated in the affidavit of amount in controversy, $55,000.00, as the amount in controversy in these proceedings.

4. In holding that since the facts could vary from year to year it could not be predicted whether the petitioner would be liable for taxes for other years than fiscal year 1941-42, and that therefore, tax liability for other years could not be taken into consideration in determining the amount in controversy in the present case.

5. In dismissing the appeal for lack of jurisdiction on the ground that the value in controversy does not exceed $5,000.00, as required by paragraph Fourth of 28 U. S. C., Section 225(a).

Reasons for Granting the Writ

The writ of certiorari prayed for should be granted because:

1. The decisions of this Court in *Elgin* v. *Marshall,* 106 U. S. 578 and *Healy* v. *Ratta,* 292 U. S. 263 are not controlling in the present case. The value of the subject in controversy is not the amount of the tax for the fiscal year 1941-42, or $2,957.96, since in a case where the issue is the right to be exempt from taxation on property the amount in controversy is measured by the right to be protected and the pecuniary result the judgment will directly produce, and not by a mere isolated element, such as the tax for a single year.

2. In the absence of other evidence the amount in controversy must be determined in the light of the affidavit of amount in controversy filed by the petitioner herein. The amount stated in the affidavit of amount in controversy, or $55,000.00, must be treated by the Court as the amount in

controversy in these proceedings, since the statements contained in said affidavit have not been controverted.

3. To determine the amount in controversy in these proceedings petitioner's tax liability for years other than fiscal year 1941-42 must be considered. Under the Puerto Rican law and decisions of the Supreme Court of Puerto Rico, the petitioner herein, under the judgment of the Supreme Court sought to be reviewed, is liable for taxes for at least fifteen years prior to fiscal year 1941-42, and for all taxes for every year thereafter. The facts of the case are the same for the fifteen years that preceded fiscal year 1941-42 and for every year thereafter up to the time the appeal was taken to the Circuit Court in 1947, and under those facts, and the judgment rendered by the Supreme Court of Puerto Rico, the petitioner's liability for taxes on its properties exceeds $5,000.00.

4. The direct pecuniary result to the petitioner of the judgment rendered by the Supreme Court of Puerto Rico, at the time the appeal was taken to the Circuit Court, was the creation of liability for taxes for not less than $55,000.00, and the pecuniary result that a judgment produces in a case where tax exemption is the subject in issue determines the amount in controversy.

WHEREFORE, in view of the above reasons and the brief filed in support thereof it is respectfully submitted that this petition should be granted.

GABRIEL DE LA HABA,
Attorney for Petitioner.

DAMIÁN MONSERRAT, JR.,
RAFAEL BARAGAÑO, JR.,
Of Counsel.

San Juan, Puerto Rico, February 17, 1948.

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Petitioner,

vs.

RAFAEL A. BUSCAGLIA, TREASURER OF PUERTO RICO, ET AL.,

Respondents

BRIEF ON BEHALF OF THE PETITIONER

Opinions Below

The *per curiam* opinions of the court below dismissing the appeal taken by the petitioner herein to the Circuit Court from a judgment of the Supreme Court of Puerto Rico entered on November 29, 1946, appear in the record at pages 127 and 129-132. The official report has not been published.

Jurisdiction

The order of the court below dismissing the appeal for lack of jurisdiction on the ground that the amount in controversy does not exceed $5,000.00, as required by para-

graph Fourth of 28 U. S. C., sec. 225 (a) was entered on November 10, 1947, and an order denying a petition for rehearing was entered on December 12, 1947.

On December 22, 1947, the mandate of the court below was stayed until further order, on condition that a petition for writ of certiorari be filed in this Court on or before February 20, 1948.

The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and section 8 (d) of the same Act (28 U. S. C. A., sections 347 (a) and 350).

Question Presented

Whether the value in controversy in the appeal taken in the above case from the judgment of the Supreme Court of Puerto Rico of November 29, 1946, exceeds $5,000.00.

Statute Involved

Section 128 of the Judicial Code as amended, 28 U. S. C., sec. 225, provides in part:

> The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions
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> • • • • • • •
>
> Fourth. In the Supreme Court of the Territory of Hawaii and of Puerto Rico, in all cases, civil or criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other cases wherein the value in controversy, exclusive of interests and costs, exceeds $5,000.00, and in all habeas corpus proceedings.
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Statement of the Case

This case originated in the Tax Court of Puerto Rico, in which court, the petitioner herein filed a petition on appeal on the 5th of February 1942 (R. 1-3), pursuant to the provisions of Act No. 172, approved by the Legislature of Puerto Rico on May 13, 1941,[2] questioning the right of the Treasurer of Puerto Rico to assess petitioner's properties for property tax purposes, on the ground that said properties were tax exempt under the provisions of section 291 (e) of the Political Code of Puerto Rico, as amended by Act No. 42, approved by the Insular Legislature on July 7, 1925.[3] The petition shows that it is a complaint against the assessment made of petitioner's hospital properties, for property tax purposes, for the fiscal year 1941-42, and that the assessment was questioned because the petitioner herein contends that it is a charitable and non-profit association exempt from the payment of property taxes under the provisions of the statute cited. The petition prays for a declaration and judgment to the effect that the petitioner is exempt from the payment of property taxes on its hospital buildings and lands up to five *cuerdas*[4] in area.

The Treasurer of Puerto Rico filed an answer to the petition on appeal (R. 3-5), denying that the petitioner herein is a charitable and non-profit organization exempt from the payment of taxes, and pleading that the tax exemption enjoyed by the petitioner since 1883 had been without any authority of law.

On October 30, 1945, the case was tried on its merits in the Tax Court (R. 5). In connection with the evidence introduced we shall comment only on such portions of the same as will bring light on the question of the amount

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[2] Laws of Puerto Rico, 1941, p. 1038.
[3] Laws of Puerto Rico, 1925, p. 256.
[4] A cuerda is a local measure slightly less than an acre.

in controversy in these proceedings. The petitioner introduced in evidence the by-laws of the association (R. 40-64). These by-laws have been in effect since 1901 without any change or amendment (R. 7). Documentary evidence introduced by the petitioner (R. 64-70), shows the way the association operated during a ten-year period, from October 1935 to September 1944; the number of patients, members, non-members and charity patients treated by the association during the period. The by-laws of the association have been the same since 1901, and the evidence admitted as to the operations of the association during a ten-year period shows that, as a matter of fact, during that entire period the association operated in the same manner (R. 12-15).

The Tax Court rendered judgment vacating the assessment and declaring and adjudging the petitioner herein exempt from the payment of property taxes (R. 88). Respondent herein filed a petition for a special writ of certiorari in the Supreme Court of Puerto Rico (R. 89-92). The writ issued (R. 92). The Supreme Court reversed the Tax Court on November 29, 1946 (R. 102). On January 14, 1947, reconsideration was denied (R. 111). The judgment rendered declared and adjudged the petitioner herein not exempt from the payment of property taxes under the statute. In its opinion the Supreme Court of Puerto Rico examined all the evidence introduced, especially the evidence referred to above (R. 93-95), and on its findings of fact, covering not only fiscal year 1941-42, but all the years to which said evidence refers, the court reached the conclusion that the petitioner was not tax exempt. The direct result of the judgment is, that the petitioner became liable for the payment of property taxes, not only for the fiscal year 1941-42, but for every year thereafter and for at least fifteen years prior thereto.

On January 17, 1947, the petitioner filed in the Supreme Court of Puerto Rico an affidavit of amount in controversy

(R. 112). It supplies the elements for exact computation of the amount owed to the Government of Puerto Rico for taxes on petitioner's properties at the time the appeal was taken to the Circuit Court. This affidavit has not been controverted and there was no other pleading or evidence before the Circuit Court with respect to the value in dispute or the amount in controversy in these proceedings.

The appeal from the judgment of the Supreme Court of Puerto Rico to the Circuit Court was taken on January 23, 1947 (R. 111). The contention of the petitioner herein, in its appeal to the Circuit Court, is that the judgment appealed from was inescapably wrong and patently erroneous (R. 123).

Motion to dismiss the appeal on the ground that the amount in controversy did not exceed $5,000.00 was filed by the respondent herein in the court below, and the motion was granted (R. 127). Petition for rehearing was denied (R. 132). The motion to dismiss was granted and the petition for rehearing was denied upon the authority of *Elgin* v. *Marshall,* 106 U. S. 578 (1882), and *Healy* v. *Ratta,* 292 U. S. 263 (1934), and on the further ground, that since the facts could vary from year to year it could not be predicted whether the petitioner would be liable for taxes for other years than fiscal year 1941-42, and therefore, tax liability for other years could not be taken into consideration in determining the amount in controversy in the present case.

Specification of Errors to Be Urged

The court below erred:

1. In holding that the case at bar is controlled by the decisions of this Court in *Elgin* v. *Marshall,* 106 U. S. 578 and *Healy* v. *Ratta,* 292 U. S. 263.

2. In holding that the amount in controversy is the amount of the tax for the fiscal year 1941-42, to wit: $2,957.96.

3. In not taking the amount of $55,000.00 stated in the affidavit of amount in controversy, as the amount in controversy in these proceedings.

4. In holding that since the facts could vary from year to year, it could not be predicted whether the petitioner would be liable for taxes for other years than fiscal year 1941-42, and that therefore, tax liability for other years could not be taken into consideration in determining the amount in controversy in the present case.

5. In dismissing the appeal for lack of jurisdiction on the ground that the amount in controversy does not exceed $5,000.00, as required by paragraph Fourth of 28 U. S. C., sec. 225 (a).

Summary of Argument

Point 1. The decisions of this Court in *Elgin* v. *Marshall*, 106 U. S. 578 and *Healy* v. *Ratta*, 292 U. S. 263, are not controlling in the present case. The value of the subject in controversy is not the amount of the tax for the fiscal year 1941-42, or $2,957.96, since in a case where the issue is the right to be exempt from taxation on property the amount in controversy is measured by the right to be protected and the pecuniary result the judgment will directly produce, and not by a mere isolated element, such as the tax for a single year.

Point 2. In the absence of pleadings or evidence the amount in controversy must be determined in the light of the affidavit of amount in controversy filed by the petitioner herein. The amount of $55,000.00 stated in the affidavit of amount in controversy, must be treated by the court as the amount in controversy in these proceedings, since the

statements contained in said affidavit have not been controverted.

Point 3. To determine the amount in controversy in these proceedings petitioner's tax liability for years other than fiscal year 1941-42 must be considered.

a. Under the Puerto Rican law and the decisions of the Supreme Court of Puerto Rico, the petitioner herein, under the judgment sought to be reviewed, is liable for taxes for at least fifteen years prior to fiscal year 1941-42, and for taxes for every year thereafter.

b. The facts of the case and the liability for taxes of the petitioner are the same for the fifteen years that preceded fiscal year 1941-42 and for every year thereafter, up to the time the appeal was taken to the Circuit Court in 1947.

c. The amount in controversy on which appellate jurisdiction depends is the matter in dispute between the parties as the case stands upon writ of error or appeal. Even granting that tax years prior to fiscal year 1941-42 can not be taken into consideration in determining the amount in controversy, at the time the appeal was taken to the circuit court the petitioner was indebted to the Government of Puerto Rico, under the judgment rendered, for taxes on its property for the fiscal years 1941-42, 1942-43, 1943-44, 1944-45, 1945-46 and 1946-47, which taxes exceed the amount of $5,000.00.

ARGUMENT

Point 1

The decisions of this Court cited by the court below are not controlling in the present case. In a case where tax exemption is the issue the amount in controversy is measured by the right to be protected and the pecuniary result the judgment will directly produce.

The cases cited by the court below in support of its order dismissing the appeal for want of jurisdiction have not been properly applied in this case. In *Elgin* v. *Marshall* (1882), 106 U. S. 578, 27 L. Ed. 249, action was brought by the holders of bonds to recover interest due thereon. The defendants asserted that the bonds and coupons were void. The circuit court entered judgment for $1,660.75, amount of interest due on the bonds. The defendant brought the case by writ of error to this Court. The jurisdiction of this Court was confined to cases wherein the value in controversy, exclusive of costs, exceeded $5,000.00. In support of the jurisdiction of the Court the defendant argued that the plaintiffs owned bonds in the amount of $7,500.00, and that they had obtained by the judgment rendered and adjudication relative to the validity of the bonds and the defendant's liability to pay the entire amount of the principal sum. This Court decided against the defendant, holding that the statutes limiting its jurisdiction "have reference to the matter directly in dispute, in the particular cause in which the judgment or decree sought to be reviewed, has been rendered, and does not permit us, for the purpose of determining its sum or value, to estimate its collateral effect in a subsequent suit between the same or other parties."

In *Healy* v. *Ratta* (1934), 292 U. S. 263, 78 L. Ed. 1248,

action was brought to enjoin the Chief of Police for the City of Manchester from arresting and prosecuting, which he threatened to do, salesmen of vacuum cleaners who sold the merchandise in Manchester without paying an annual license fee or tax required by the law. The district court enjoined the defendant Chief of Police and the decree was affirmed by the circuit court. The case was appealed to this Court and the question before it was the appellant's contention that the case was not within the jurisdiction of the district court since the value in controversy was less than $3,000.00. The decision of the Circuit Court was reversed on the ground that the tax, payment of which was demanded and resisted, was the matter in controversy; that the tax was less than the jurisdictional amount, and that ". . . the collateral effect of the decree, by virtue of *stare decisis,* upon other and distinct controversies may not be considered in ascertaining whether the jurisdictional amount is involved, even though their decision turns on the same question of law. . . ."

In both cases the value of the subject-matter directly in dispute decided the question of jurisdictional amount; the subject-matter in the first case being the amount of the interest due on the bonds, and in the latter case the tax which was demanded and resisted.

However, the subject-matter in dispute in this case is not the amount of the tax for the fiscal year 1941-42, amounting to $2,957.96. In a case where the issue is the right to be exempt from taxation on property, the amount in controversy is measured by the value of the right to be protected and the pecuniary result the judgment will directly produce, and not by a mere isolated element such as the tax for a single year. This has been repeatedly decided by this Court and by the Circuit Courts. Thus, in *Berryman*

v. *Board of Trustees* (1912), 222 U. S. 334, 56 L. Ed. 225, 229, this Court said:

> "Considering the averments of the bill, the amount and value of the property of the corporation, and the nature and character of the contract of exemption asserted, it can not be doubted that the value of the thing in issue, the contract right, exceeded in value the jurisdictional amount. Granting that the uncertainties of the future and the shifting ownership of property forbids, in a contest merely over the validity of a tax, adding the sum of future taxes which might be levied to the amount of taxes actually levied for the purpose of jurisdiction, that principle can have no application to a case where the issue presented is not only the right to collect, but also to levy all future taxes. The admission that the right to tax may be abridged by contract, and that such contract may be impaired without violating the Constitution, carries with it of necessity the power and the duty to protect the contract right, and in the nature of things causes jurisdiction for such purpose to be measured by the value of the right to be protected, and not by the value of some mere isolated element of that right."

The issue between the parties in the present case is whether or not the property is tax exempt, not only for fiscal year 1941-42 but for all years before and after. The jurisdictional amount is then to be tested by the value of the object to be gained by the petitioner herein. *Glenwood Light & Water Co.* v. *Mutual Light, Heat & Power Co.* (1915), 239 U. S. 126, 60 L. Ed. 174, 176; *Western & Atlantic Railroad* v. *Railroad Commission of Georgia,* (1923), 261 U. S. 267, 67 L. Ed. 645, 647. The *Healy* v. *Ratta* case, *supra,* cited by the court below, illustrates and discusses the difference between a case where the tax for a single year is the matter in dispute and a case in which the matter in controversy is a question of permanent exemption from an annual property tax. In a dis-

pute over a tax for a single year, the amount of the tax for that year determines the jurisdictional amount because no past or future rights are at issue, but in a case whether controversy is over a tax exemption from an annual property tax, the measure of the amount in controversy is the value of the right to be protected, that is, the taxpayer's liability under the statute, if held not to be tax exempt.

In the case at bar the petitioner has not raised any question relative to the propriety of the tax or the reasonableness of the assessment. Only the question of its right to a total tax exemption is the subject of controversy (R. 39). The judgment of the Supreme Court of Puerto Rico settles the rights of the parties in the matter actually in dispute: tax exemption. That judgment might have resulted from a dispute over the right of the Treasurer of Puerto Rico to assess the property for tax purposes in the year the action was brought, but the effect of the judgment is the adjudication of a dispute between the parties, the amount or value of which exceeds the required jurisdictional amount. Under such circumstances, the liability of the petitioner under the taxing statute, if the judgment is affirmed on appeal, must be considered as the amount in controversy. *Troy* v. *Evans* (1878), 97 U. S. 1, 24 L. Ed. 941.

The *Berryman* v. *Board of Trustees* case, *supra*, has been repeatedly cited, discussed, and applied by the circuit courts. These courts have consistently held that in cases like the present the jurisdictional amount is tested, not by the mere immediate pecuniary damage resulting from the acts complained of, but by the value of the right to be protected; the wrong to his right which a party seeks to have recognized and enforced, and the pecuniary result to either party which the judgment will directly produce. *Massachusetts Protective Ass'n* v. *Kittles*, 2 F. (2) 211, 212; *Wright* v. *Mutual Life Ins. Co.*, 3 F. (2) 501, 502; *Fajardo*

Sugar Co. v. *Holcomb*, 16 F. (2) 92, 94; *Elliot* v. *Empire Natural Gas Co.*, 4 F. (2) 493, 495, 496, 497; *Enger* v. *Northern Finance Corp.*, 31 F. (2) 136, 141; *Nutt* v. *Ellerbe*, 56 F. (2) 1058, 1061; *Zickos* v. *Dickman*, 98 F. (2) 347, 349; *Johnson* v. *Equitable Life Assur. Soc.*, 127 F. (2) 77, 78; *Kelly* v. *Lehigh Nav. Coal Co.*, 151 F. (2) 743, 746. And in 1 Moore's Federal Practice, 1946 Supplement, page 193, citing *Ronzio* v. *Denver & R. G. W. R. Co.*, 116 F. (2) 604, it is said, that the court may look to the object sought to be accomplished by the action and the pecuniary result to either party which the judgment would directly produce in order to determine the amount in controversy.

POINT 2

In the absence of pleadings or evidence the amount in controversy must be determined in the light of the affidavit of amount in controversy filed by the petitioner.

The value of the matter in dispute or amount in controversy does not appear from the pleadings or from the evidence in the instant case, nor was it necessary or required that it should appear on record, since the issue between the parties was at all times the question of tax exemption under the statute. Under such circumstances, the amount in controversy must be determined in the light of the affidavit of amount in controversy filed by the petitioner (R. 112). This affidavit has not been controverted and there is no pleading or evidence before the circuit court with respect to the value in dispute. Consequently, the amount stated in the affidavit should have been treated by the court below as the amount in controversy. *Williamson* v. *Kincaid* (1800), 4 U. S. 20, 4 Dall. 20, 1 L. Ed. 723; *Course* v. *Stead* (1800), 4 U. S. 22, 4 Dall. 22, 1 L. Ed. 724; *Lockwood* v. *The Grace Girdler* (1867), 73 U. S. 441, 18 L. Ed. 790; *May* v. *Sloan* (1879), 101 U. S. 231, 25 L. Ed.

797; *Micas* v. *Williams* (1881), 104 U. S. 556, 26 L. Ed. 842; *De Villanueva* v. *Villanueva* (1915), 239 U. S. 293, 60 L. Ed. 293; 4 C. J. S., page 159, sec. 72.

Petitioner's affidavit supplies the element for exact computation which was missing in *Washington & Georgetown R. Co.* v. *District of Columbia* (1892), 146 U. S. 227, 36 L. Ed. 951, 953. In the case at bar contrary to what happened in the case cited, accrued taxes to the date the appeal was taken to the circuit court were definitely ascertained, and they exceed the jurisdictional amount of $5,000.00.

Section 39 (a) of the Revised Rules of the Circuit Court of Appeals for the First Circuit provides that whenever the existence of the requisite jurisdictional amount is not satisfactorily disclosed upon the record the appellant is required to file, together with the statement on appeal, an affidavit, or other competent evidence with respect to the amount or value in controversy. The same rule of law is contained in the Act of February 13, 1925, 28 U. S. C., sec. 231. It has been held that the appellee has the same privilege and may file counter affidavits to show the nonexistence of the requisite jurisdictional amount. *De la Torre* v. *National City Bank,* 110 F. (2) 281, 384. As stated before, no such affidavit or other competent evidence was filed by the appellee in the court below to controvert the appellant's showing of the requisite jurisdictional amount. If ordinary rules of evidence were applied to this situation we would be justified in saying that the appellant's affirmative statements relative to the amount in controversy were admitted. The situation would then be that the motion to dismiss the appeal for want of jurisdiction was one in the nature of a demurrer by which the appellee, though admitting the facts stated in the appellant's affidavit, still alleges that the court below was without jurisdiction. The question would then turn from one of fact to a question of law. Petitioner's affidavit of amount in

controversy plainly states that under the judgment rendered it is bound to pay taxes for not less than 22 years in the amount of $55,000.00. As this fact should be considered admitted by the respondents, through their failure to controvert it, we can not understand the reasoning of the court below to the effect that it could not be predicted whether the petitioner would be liable for taxes for other years than fiscal year 1941-42 and that, therefore, tax liability for other years could not be taken into consideration in determining the amount in controversy in the present case.

As a matter of law the petitioner's liability for back taxes has been decided by the Supreme Court of Puerto Rico in *Martínez* v. *Sancho Bonet*, Treasurer, hereinafter referred to.

POINT 3

To determine the amount in controversy in these proceedings petitioner's tax liability for years other than fiscal year 1941-42 must be considered.

Under the local law, as a direct effect of the judgment of the Supreme Court of Puerto Rico, if the same is affirmed, the petitioner becomes liable for taxes on its property for at least fifteen years prior to fiscal year 1941-42. *Martínez* v. *Sancho Bonet, Treasurer*, 53 P. R. R. 527, 535; sec. 1864, Civil Code of Puerto Rico, 1930 ed.

The evidence introduced by the petitioner, to which we have referred hereinabove, definitely shows that the association has been governed by the same charter and by-laws regulating its operations since 1901, and that the association has operated in the same manner for many years prior to 1941. These are established facts which appear on the record. The opinion of the Supreme Court of Puerto Rico analyzes this evidence, and the court made definite findings of fact taking into consideration, not the operations of the

association during one given year, but on the basis of the regulations which governed its operations since 1901, as well as the manner in which the association operated through the years from 1935 to 1944. It was on findings of fact, covering not less than forty years of the life of the association, that the court reached the conclusion that the petitioner is not tax exempt. The court did not decide that the petitioner was not exempt from the payment of property taxes for the fiscal year 1941-42. It adjudged and decided that because of its form of organization and the way it operated through the years, the petitioner was not a charitable and non-profit association within the meaning of section 291 (e) of the Political Code of Puerto Rico. Consequently, the dispute between the parties is not limited to the issue as to whether the petitioner was liable for the taxes for fiscal year 1941-42, but whether it was liable for taxes for that year and for as many years back as the local government may reach within the law. There is no question relative to a different factual situation prior to 1941. The evidence relative to prior years was also before the court, and it was on the basis of that evidence that judgment was rendered.

The affidavit of amount in controversy shows that the petitioner will have to pay under the judgment rendered, if affirmed, an average tax of $2,500.00 a year. Under that judgment, and the local law as interpreted in *Martínez* v. *Sancho Bonet, Treasurer, supra* the Treasurer of Puerto Rico can reach back and exact liability for taxes from the petitioner for fifteen years. Thus, the direct result of the judgment rendered on the question actually at issue, tax exemption, is to impose a liability on the petitioner in the amount of $40,457.96 for taxes accrued up to and including fiscal year 1941-42.

The court below has held repeatedly that the amount in controversy at the time the appeal is taken to that court

determines its jurisdiction. *Municipality of Rio Piedras* v. *Serra Garabis & Co.*, 65 F. (2) 691, 698; *Montes* v. *Sancho*, 82 F. (2) 25, 27; *De la Torre* v. *National City Bank*, 110 F. (2) 381, 382. In the case of *Montes* v. *Sancho, supra*, the jurisdiction of the Circuit Court was sustained on the ground that the salary pertaining to the office to which the plaintiff sought to be restored was $2,000.00 a year; that three years and some months had elapsed since the plaintiff had ceased to occupy the office in question up to the time the appeal was taken to the Circuit Court, and that consequently the amount in controversy at the time of the appeal exceeded $6,000.00. In the instant case the appeal was taken to the Circuit Court on January 23, 1947 (R. 111). At the time of the appeal, under the judgment rendered by the Supreme Court of Puerto Rico, the petitioner was indebted to the Government of Puerto Rico for the taxes of fiscal year 1941-42, 1942-43, 1943-44, 1944-45, 1945-46 and 1946-47. Section 330 of the Political Code of Puerto Rico (Revised Statutes of Puerto Rico 1911, page 595). Taking into consideration the uncontroverted statement contained in the affidavit of amount in controversy, and even disregarding any liability for taxes accrued prior to fiscal year 1941-42, the petitioner was indebted to the Government of Puerto Rico at the time the appeal was taken to the Circuit Court in the amount of $12,957.96. Can it be properly said that there is no jurisdictional amount in the appeal before the court below?

We fail to see how the present case can be distinguished from *Montes* v. *Sancho, supra*. If anything, this is even a stronger case showing that the amount in controversy exceeds $5,000.00 than the cases cited. The record also reveals that at the time the case was tried before the Tax Court, October 30, 1945 (R. 5), the petitioner was organized and operated as it had since 1901. No statement or claim is made by the respondents to the effect that the laws im-

posing tax liability on the petitioner have been repealed, modified or amended. The factual situation was the same in January, 1947, as it was in 1941. We must therefore conclude that at the time of the appeal, taxes for six tax-years had accrued and were owing to the Government of Puerto Rico. It seems to us to be of capital importance that the test applied by the circuit court in *Montes* v. *Sancho, supra,* should with more force and propriety apply in the present case where there is a definite showing in the record that liability in excess of $5,000.00 had accrued, for taxes, between fiscal year 1941-42 and the time the appeal was taken in January 1947.

Conclusion

It is urged on behalf of the petitioner that the record in this case, considered jointly with the affidavit of amount in controversy, shows, that the amount in controversy exceeds $5,000.00; that in this case the issue in dispute between the parties is total tax exemption from taxation, and that this being so, the direct effect of the judgment rendered was to determine a liability for taxes against the petitioner in excess of $5,000.00, and that the amount in controversy in these proceedings exceeds $5,000.00 whether the subject-matter in dispute is considered to be liability under the local law for taxes accrued up to fiscal year 1941-42 or for taxes owed to the Insular Government and accrued between said year and the time the appeal was taken to the Circuit Court.

The petition before the Court brings up a question of great importance. It is not one of mere local import and of a non-recurring nature. It is one, not only arising out of the application of a federal statute and affecting the jurisdiction on appeals from the Supreme Court of Puerto Rico to the Circuit Court, but affecting also the jurisdiction of that court in all cases where the amount in controversy, as

the basis of jurisdiction and the process and method of determining the statutory requirement is involved. The decision in that respect affects all appeals before the Circuit Court coming from the United States District Courts when the determination of the jurisdictional amount in controversy is at issue under the provisions of Section 24 of the Judicial Code (28 U. S. C. A. Sec. 41), and also its own jurisdiction on appeals from the Supreme Court of Puerto Rico under Section 128 of the Judicial Code (28 U. S. C. A., Sec. 225).

The decision rendered by the court below sets a judicial precedent at variance with its own decisions and those of other circuit courts. It is also contrary to well settled rules laid down by this Court in the cases we have cited. We submit therefore, that the petition for a writ of certiorari merits serious consideration.

The order of the Circuit Court dismissing the appeal for lack of jurisdiction on the ground that the amount in controversy does not exceed $5,000.00 should be reversed and the case remanded for further proceedings not inconsistent with the decision of the Court.

Respectfully submitted,

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Of Counsel.

San Juan, Puerto Rico, February 17, 1948.

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 615

SOCIEDAD ESPANOLA DE AUXILIO MUTUO Y BENEFICENCIA DE PUERTO RICO, PETITIONER

v.

RAFAEL A. BUSCAGLIA, TREASURER OF PUERTO RICO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals on the motion to dismiss (R. 127) is not reported. Its opinion on petition for rehearing (R. 129–132) is reported in 164 F. 2d 745.[1]

[1] The opinion of the Supreme Court of Puerto Rico (R. 93–103), from whose judgment the appeal to the Circuit Court of Appeals was taken, has not yet been reported. It has no bearing upon the question presented by the petition for certiorari.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 10, 1947 (R. 127). A timely petition for rehearing was denied December 12, 1947 (R. 132). The petition for a writ of certiorari was filed February 20, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether upon an appeal from a judgment of the Supreme Court of Puerto Rico sustaining an assessment which would require the appellant to pay a tax of $2,957.96, "the value in controversy" exceeds $5,000.

STATUTE INVOLVED

Section 128 of the Judicial Code as amended, 28 U. S. C. sec. 225, provides in part:

> The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions —
>
> * * * * *
>
> Fourth. In the Supreme Courts of the Territory of Hawaii and of Puerto Rico, in all cases, civil or criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases wherein the value in controversy, exclusive of interests and costs, exceeds

$5,000, and in all habeas corpus proceedings.

* * * * *

STATEMENT

The instant proceeding was commenced by filing a petition of appeal to the Tax Court of Puerto Rico (R. 1–2). The petition stated that it was a complaint against an appraisal of $142,210 put upon petitioner's property for the fiscal year 1941–1942. It asserted that the appraisal was erroneous because petitioner was a charitable society and therefore exempted from taxes by Section 291 (e) of the Political Code of Puerto Rico. And it prayed that "the complaint be granted, leaving without force and effect the appraisal made, and exempting [petitioner] from the payment of taxes" (R. 2).

Thereafter, the Tax Court entered an order that "the appraisement taken in this case is hereby vacated, since [petitioner] enjoys a tax exemption under Section 291 of the Political Code" (R. 88). However, the Supreme Court of Puerto Rico reversed the order (R. 102). By virtue of its judgment, petitioner is bound to pay taxes for the fiscal year 1941–1942 in the amount of $2,957.96 (see e. g. R. 112–113).

Petitioner filed a notice of appeal to the Circuit Court of Appeals for the First Circuit (R. 111–112), together with an affidavit asserting that the amount in controversy was $55,000 (R. 112–113).

Respondents moved to dismiss on the ground that the value in controversy did not exceed $5,000 (R. 127). The Circuit Court of Appeals dismissed the appeal on the authority of *Elgin* v. *Marshall,* 106 U. S. 578, and *Healy* v. *Ratta,* 292 U. S. 263 (R. 127). On December 12, 1947, it denied a petition for rehearing (R. 132).

ARGUMENT

The appeal to the court below did not involve a federal question. As that court observed (R. 130), "the case involves merely the interpretation, and application to a particular set of facts, of an insular law according tax exemption to property devoted to charitable purposes." Under the statute, the appeal could be maintained only if it were one "wherein the value in controversy, exclusive of interests and costs, exceed $5,000." (Section 128, Judicial Code as amended, 28 U. S. C. sec. 225.) The judgment of the insular court merely required petitioner to pay $2,957.96. Obviously, then, the "value in controversy" on this appeal fell short of the requisite jurisdictional amount. *Elgin* v. *Marshall,* 106 U. S. 578; *Gibson* v. *Shufeldt,* 122 U. S. 27, 29; *Vicksburg &c. Railroad Co.* v. *Smith,* 135 U. S. 195, 200; *New England Mortgage Co.* v. *Gay,* 145 U. S. 123, 130–131; *Healy* v. *Ratta,* 292 U. S. 263, 267.

It may be, as petitioner asserts (Pet. 21–25), that, as a collateral consequence of the judgment, it will be compelled to pay taxes for many years

before and after 1941–1942. But this consideration is irrelevant. "It is not the actual value of the judgment sought to be reviewed which confers jurisdiction, * * * it is the nominal or apparent sum or value of the subject-matter of the judgment." *Elgin* v. *Marshall,* 106 U. S. 578, 581. The question there decided is indistinguishable from the one presented here.

In *Elgin* v. *Marshall,* holders of bonds issued by the Town of Elgin sued to recover interest due thereon. The defendant asserted that the bonds and coupons were invalid. But the trial court entered judgment for plaintiffs for $1,660.75. The Town sued out a writ of error to this Court. Its appellate jurisdiction, like that of the court below in the case at bar, extended only to decisions in which the matter in dispute exceeded $5,000. The Town, however, argued that the plaintiffs owned bonds in the amount of $7,500; that they had obtained an adjudication conclusive upon the Town of its liability to pay the principal sum due, and that consequently the value in controversy exceeded $5,000.

This Court said (106 U. S. at p. 579):

> It is true that the point actually litigated and determined in this action was the validity of the bonds, and as between these parties, in any subsequent action upon other coupons, or upon the bonds themselves, this judgment * * * might, and as to all questions actually adjudged would, be conclusive as an estoppel.

Nevertheless, it held that the statutes limiting its appellate jurisdiction had "reference to the matter which is directly in dispute, in the particular cause in which the judgment or decree sought to be reviewed, has been rendered, and do not permit us, for the purpose of determining its sum or value, to estimate its collateral effect in a subsequent suit between the same or other parties." Consequently, the Court dismissed the writ of error.

Berryman v. *Whitman College,* 222 U. S. 334, does not support petitioner's contention. The Court did not there hold that the amount in controversy was the sum of several years' taxes. Such a contention was not made in that case. It was a suit to enforce what the Court termed (222 U. S. at p. 344) a "contract of perpetual exemption from taxation." Accordingly, the Court held (pp. 345–348) that the amount in controversy was the value of the contractual right and not—as the taxing authority argued—the amount of taxes which was demanded on the particular occasion when the right was first questioned.

Unlike Whitman College, petitioner does not claim a contract exempting it from taxation. Rather, its claim to immunity rests on a statute which the Territory could have modified or repealed at any time. And it could have removed

itself from danger by ceasing activities and disposing of the properties here taxed. "These, or like considerations," said this Court in *Healy* v. *Ratta,* 292 U. S. 263, 271, "have led to the conclusion that, in suits to enjoin the collection of a tax payable annually * * * the sum due or demanded is the matter in controversy and the amount of the tax * * * is the measure of the jurisdictional amount." So here, the sum due under the assessment for 1941–1942 is the measure of the jurisdictional amount.

Furthermore, as the court below pointed out (R. 132), the exemption from tax depended upon the use to which the property was being put in the particular year for which the tax was assessed and, even if petitioner had succeeded in setting aside the assessment here involved, it could not have obtained an injunction against assessments for other years. Obviously, then, the taxes that might be levied under such assessments may not be considered in determining the value in controversy on an appeal from this assessment.

CONCLUSION

This case presents no issues of general importance. The decision of the court below is correct, and there is no conflict of decisions. The petition for certiorari should be denied.

Respectfully submitted.

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